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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,786	12/11/2003	Samuel S. Mehring JR.	MD115/01	6924

7590 04/16/2004
Edward P. Dutkiewicz
640 Douglas Avenue
Dunedin, FL 34698

EXAMINER

SANTOS, ROBERT G

ART UNIT PAPER NUMBER

3673

DATE MAILED: 04/16/2004


Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/732,786

Applicant(s)

MEHRING, SAMUEL S. 

Examiner

Robert G. Santos

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3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4 and 5 is/are rejected.
- 7) ☒ Claim(s) 1 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-3 and 5 are objected to because of the following informalities:
 - 1) In claim 1, lines 7 & 8 and in claim 2, line 4: The phrase "there between" should be changed to the term --therebetween--.
 - 2) In claim 1, line 17: The number --30-- should be inserted after the term "about", and the number --40-- should be inserted after the term "and".
 - 3) In claim 1, line 22 and in claim 3, line 4: "ans" should be changed to the term --and--.
 - 4) In claim 1, line 40 and in claim 5, line 4: The term "aperture" should be changed to the phrase --the apertures--.
 - 5) In claim 2, line 5: The term "there" should be changed to --therebetween--.
 - 6) In claim 2, line 6: The term "between" should be deleted.Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 2 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mattison '601 (note especially Figures 1-3; column 2, lines 33-55; and column 3, lines 1-6).

4. Claims 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Powell '824 (note especially Figures 1 & 2 and column 3, lines 14-62).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 2, 4, and 5 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Bernstein '229 (note especially Figure 6 and column 6, lines 1-55).

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Allowable Subject Matter

7. Claim 1 is objected to but would be allowable if rewritten to overcome the claim objection(s) noted above.
8. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the claim objection(s) noted above and in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Satto '449, Murphy '313, Murphy '557, Suzuyama et al. '763, Hall '507, Marco '642, and Warner '579.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tu-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
April 14, 2004